

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JAN 06 2012

JULIA C. DUDLEY, CLERK  
BY: *HMcDonald*  
DEPUTY CLERK

BRYAN JAMES VALENTINE,  
Plaintiff,

v.

ROANOKE COUNTY POLICE,  
DEPARTMENT, et al.,  
Defendants.

Civil Action No. 7:10-cv-00429

MEMORANDUM OPINION

By: Hon. Jackson L. Kiser  
Senior United States District Judge

This matter is before me upon plaintiff's response to the court's November 23, 2011, Order directing him to file an Amended Complaint for this 42 U.S.C. § 1983 civil rights action. Plaintiff requests in his response that this action be dismissed without prejudice because he cannot complete his discovery or Amended Complaint while he is incarcerated.

Federal Rule of Civil Procedure 41(a)(2) permits plaintiff to voluntarily dismiss this action only by a court order because defendants already filed their Answer. Defendants have not objected to plaintiff's request, and the parties will not be "unfairly prejudiced." See Phillips USA, Inc., v. Allflex USA, Inc., 77 F.3d 354, 358 (10th Cir. 1996) (discussing factors to consider when dismissing action pursuant to Fed. R. Civ. P. 41(a)(2)); Davis v. USX Corp., 819 F.2d 1270, 1273 (4th Cir. 1987) (same). The docket reveals that this action has not progressed very far, and defendants have not yet expended substantial efforts to respond to this action. Furthermore, any excessive delay or lack of diligence in prosecuting this action is attributable to plaintiff. Accordingly, I grant plaintiff's request for voluntary dismissal without prejudice and deny as moot any outstanding motions.

The Clerk is directed to send certified copies of this Memorandum Opinion and the accompanying Order to plaintiff and counsel of record for defendants.

ENTER: This 6<sup>th</sup> day of January, 2012.

*Jackson L. Kiser*  
Senior United States District Judge